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In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

RSR CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE *FIFTH* CIRCUIT

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QUESTION PRESENTED

Whether, when Congress recodified the Interstate Commerce Act "without substantive change," it "inadvertently" repealed pre-existing criminal penalties for violations by private carriers of the Federal Motor Carrier Safety Regulations.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-15a) is reported at 664 F.2d 1249.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 16a) was entered on January 4, 1982. A timely petition for rehearing was denied on June 23, 1982 (App. C, *infra*, 17a-18a). On August 16, 1982, Justice White extended the time for filing a petition for a writ of certiorari to and including September 21, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 204(a)(3) of the Interstate Commerce Act, 49 U.S.C. 304(a)(3) provides:

> (a) It shall be the duty of the [Interstate Commerce] Commission—
>
> * * * * *
>
> (3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of subsection (c) of this section and sections 305, 320, 321, 322(a), (b), (d), (f), and (g), and 324 of this title.

2. 49 U.S.C. (Supp. IV) 11909(b) provides:

> A person required to make a report to the [Interstate Commerce] Commission, answer a question, or make, prepare, or preserve a record under this subtitle about transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Commission requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Commission, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Commission, (6) knowingly and willfully makes a false or incomplete entry in that record about a business related fact or transaction, or (7)

knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Commission, shall be fined not more than $5,000.

3. 49 U.S.C. 1655(e)(6)(C) provides:

(e) There are hereby transferred to and vested in the Secretary [of Transportation] all functions, powers, and duties of the Interstate Commerce Commission, and of the Chairman, members, officers and offices thereof, under—

* * * * *

(6) the following provisions of the Interstate Commerce Act, as amended—

* * * * *

(C) relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment: Sections 204(a)(1) and (2), to the extent that they relate to qualifications and maximum hours of service of employees and safety of operation and equipment; and sections 204(a)(3), 3(a), and (5) (49 U.S.C. 304).

4. 49 U.S.C. 1655(f)(2)(A) and (B) provides:

(2)(A) With respect to any function which is transferred to the Secretary [of Transportation] by subsection (e) and which was vested in the Interstate Commerce Commission preceding such transfer, the Secretary shall have the same administrative powers under the Interstate Commerce Act as the Commission had before such transfer with respect to such transferred function. After such transfer, the Commission may exercise its administrative powers under the Interstate Commerce Act only with respect to those of its functions not transferred by subsection (e).

(B) For purposes of this paragraph—

(i) the term "function" includes power and duty, and

(ii) the term "administrative powers under the Interstate Commerce Act" means any functions

under the following provisions of the Interstate Commerce Act, as amended: * * * section[ ] * * * 222 [codified as 49 U.S.C. 322, recodified as 49 U.S.C. 11909] (except subsections (b)(2) and (b)(e) thereof) * * *.

STATEMENT

1. Respondent RSR Corporation ("RSR") sells lead obtained from recycled batteries and uses a large fleet of privately owned trucks to transport its property across state lines (June 6, 1980 Tr. 7).[1] As such, it is one of approximately 108,000 private motor carriers subject to the jurisdiction of the Department of Transportation (DOT), which regulates carrier safety. In 1969 and 1973, during safety compliance surveys of RSR's motor carrier operations, DOT investigators found numerous violations of the Federal Motor Carrier Safety Regulations. Some of those violations concerned drivers' daily log books. On both occasions, RSR promised that it would institute procedures to correct the deficiencies (July 11, 1980 Tr. 45, 47-48).

A third safety compliance survey of RSR's operations in 1979 revealed hundreds of violations of the motor carrier safety regulations, including at least two instances in which RSR failed to report a major accident involving one of its vehicles (July 11, 1980 Tr. 46, 48-49). Accordingly, on April 21, 1980, the government filed a criminal information in the United States District Court for the Northern District of Texas charging RSR with eight counts of maintaining false daily driver logs, in violation of 49 U.S.C. (Supp. IV) 11909(b) and

[1] "June 6, 1980 Tr." refers to the transcript of a hearing in the district court on RSR's motion to dismiss the information. "June 23, 1980 Tr." refers to the transcript of the plea hearing in the district court. "July 11, 1980 Tr." refers to the sentencing hearing.

49 C.F.R. 395.8.[2] The information alleged that RSR knowingly and willfully maintained logs indicating that drivers were off duty when in fact they were not (June 23, 1980 Tr. 22-25).

RSR moved to dismiss the information on the ground that Section 11909(b) does not prescribe criminal penalties for private carriers such as itself. The district court denied RSR's motion (June 16, 1980 Tr. 17), and RSR pleaded guilty to five counts of the information (June 23, 1980 Tr. 22-24, 31). Following RSR's plea of guilty, it was fined $5,000 on each of the five counts and the remaining three counts were dismissed (July 11, 1980 Tr. 50-51).

2. The court of appeals vacated RSR's convictions, holding that, as a result of the 1978 recodification of the Interstate Commerce Act (Pub. L. No. 95-473, 92 Stat. 1337), criminal penalties for violations of 49 C.F.R. 395.8 no longer applied to private motor carriers. Although the court recognized that Congress expressly stated in Section 3(a) of the 1978 recodification that the act "may not be construed as making a substantive change in the laws replaced" (Pub. L. No. 95-473, 92 Stat. 1466),[3] it found that Congress nonetheless had

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[2] 49 U.S.C. (Supp. IV) 11909(b) imposes criminal penalties for willfully maintaining false records, including records required by 49 C.F.R. 395.8, which provides in pertinent part:

> (a) Except as provided in § 395.9 and paragraph (t) of this section, every motor carrier shall require that a driver's daily log, form MCS-59, shall be made in duplicate by every driver used by the carrier and every driver who operates a motor vehicle shall make such a log. Failure to make logs, failure to make required entries therein, falsification of entries, or failure to preserve logs shall make both the driver and the carrier liable to prosecution * * *.

[3] Section 3 of the Act, entitled "Legislative Purpose and Construction," provides in pertinent part (Pub. L. No. 95-473, 92 Stat. 1466):

> (a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were

"inadvertently" made a major change—the repeal of criminal penalties for violations of safety regulations by private motor carriers.

The recodified penalty provision (49 U.S.C. (Supp. IV) 11909(b)) replaced 49 U.S.C. 322(g). It generally tracked the language of Section 322(g), but included, in the panel's view, one significant change: a reference to "transportation subject to the jurisdiction of the [Interstate Commerce] Commission." The court concluded that, because the 1966 Department of Transportation Act had transferred the ICC's authority to regulate private motor carriers to the DOT, the ICC had no such jurisdiction at the time of recodification. Therefore, the recodified provision did not apply to private motor carriers because, in the court's view, such carriers were not "subject to the jurisdiction" of the ICC. Accordingly, the court held that the 1978 recodification stripped the DOT of enforcement powers over its own regulations issued pursuant to 49 U.S.C. 304(a)(3).

The court reached this conclusion even though it recognized that "Congress intended no substantive change in the Interstate Commerce Act and related laws" (App. A, *infra*, 6a). Moreover, the court noted that there is no dispute "that the information would have been proper if RSR had been charged with a violation of 49 U.S.C. § 322(g)" prior to the recodification (App. A, *infra*, 8a; see *id.* at 2a). Finally, after reviewing the

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replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. * * *

* * * * *

(c) An order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1 and 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

legislative history, the court concluded that it was unambiguously clear that Congress intended to preserve criminal sanctions in the situation: "this is what Congress clearly meant to say, intended to say, and wanted to say" (*id.* at 10a). The court nevertheless declined to follow what it recognized to be the manifest intent of Congress; instead, it considered itself bound by the doctrine of strict construction and reversed RSR's convictions.

REASONS FOR GRANTING THE PETITION

This case presents an important question concerning the authority and responsibility of the Department of Transportation (DOT) to regulate private motor carriers. The decision below strips DOT of authority to promulgate mandatory regulations for almost two-thirds of the carriers that are currently subject to its jurisdiction. The potential impact of the decision below is illustrated by the following figures: DOT's Federal Highway Administration currently promulgates safety regulations for some 180,000 carriers, including more than 108,000 private carriers who operate approximately 850,000 vehicles. Thus, DOT's ability to assure safety on the nation's highways will be severely restricted unless the decision below is reversed. Indeed, the adverse consequences of the court of appeals' decision already have begun to emerge. On September 2, 1982, a district court, relying on the decision below, granted a motion to vacate a two-year old criminal conviction under a companion provision of the Interstate Commerce Act. *United States* v. *Faygo Beverages, Inc.*, Cr. No. 80-80509 (E.D. Mich.). When placed in context, the implications of this decision are clear. The Federal Highway Administration's regional office in Ft. Worth, which covers Texas, New Mexico, Louisiana, Arkansas and Oklahoma (an area embracing a large part of the Fifth Circuit), estimates that in the years 1978-1981 it

recommended the prosecution of almost 40 criminal cases against private carriers. Many of those prosecutions could be undermined by the decision of the court of appeals in this case.[4]

Without the criminal penalties Congress enacted, DOT would be left without any effective means of enforcing its safety regulations for private motor carriers. Under the decision below, those regulations would no longer be mandatory but merely precatory because no enforcement mechanism would remain. This is contrary to the express language and legislative history of the recodification of the Interstate Commerce Act, and is at odds with numerous decisions of this Court that hold that penal statutes are not to be construed in a manner that defeats Congress' manifest intent. The judgment in the present case, moreover, cannot be reconciled with the recent decision of the Second Circuit in *United States* v. *Rossetti Brothers*, 671 F.2d 718 (1982), which rejected the same arguments that prevailed in the Fifth Circuit. Review by this Court is necessary in order to resolve this split in circuit court authorities in a manner that will allow DOT to fulfill its statutory mandate of ensuring safety on the nation's highways.

1. Prior to 1966, the Interstate Commerce Commission (ICC) was empowered to regulate aspects of transportation of property by motor carriers engaged in interstate commerce (see ch. 498, 49 Stat. 543 (49 U.S.C. 1 *et seq.*)). While all such carriers were subject to ICC jurisdiction, the extent of regulation depended upon

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[4] Any of those cases still pending within the Fifth Circuit would be subject to the holding in the present case. Moreover, even terminated cases would be subject to collateral attack if the theory of the district court in *Faygo Beverages*, *supra*, were followed.

The Ft. Worth office is one of the nine Federal Highway Administration regional offices. Other regional offices have reported comparable caseloads.

whether the carrier was classified as a common, contract, or private carrier. Section 204(a)(3) of the Interstate Commerce Act (49 U.S.C. 304(a)(3)), gave the Commission powers to promulgate regulations governing the safety of private motor carriers. And Section 222(g), 49 U.S.C. 322(g) (now codified at 49 U.S.C. (Supp. IV) 11909(b)) provided criminal penalties for failure to comply with those regulations.

In 1966, the Department of Transportation was created (Pub. L. No. 89-670, 80 Stat. 931, (codified at 49 U.S.C. 1651 *et seq.*)) and certain functions previously performed by the ICC were transferred to DOT. Among the functions so transferred were those relating to "qualifications and maximum hours of service of employees and safety of operation and equipment [under] * * * sections 204(a)(3), (3a), and (5) (49 U.S.C. 304)." 49 U.S.C. 1655(e)(6)(C). In addition, 49 U.S.C. 1655(f) expressly provided that DOT was vested with the same functions and administrative powers the ICC had enjoyed under 49 U.S.C. 322. Thus, plenary power to adopt regulations governing private carriers and to enforce those regulations by criminal prosecution, previously within the jurisdiction of the ICC, was transferred directly to DOT. See *United States* v. *Youngstown Cartage Co.*, Fed. Carr. Cas. (CCH) ¶ 82,383 (N.D. Ohio Jan. 10, 1973).[5]

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[5] The district court in *Youngstown Cartage* provided a succinct summary of the state of the relevant law with respect to private carriers following enactment of the 1966 Department of Transportation Act (Fed. Carr. Cas. (CCH) ¶ 82,383 at 56,062 to 56,063):

> [T]he powers, duties and functions of the ICC including its regulations were transferred to DOT. One of these powers, duties and functions carried over concerns the maximum hours of service of employees and safety operation and equipment * * *. The Act also transferred to DOT the administrative power to pr[e]scribe regulations and enforce provisions of the chapter dealing with motor carriers.

This statutory scheme was not revisited until 1978 when Congress, recognizing that intervening amendments had left the substantive provisions of federal transportation law scattered among various codified and uncodified sections, undertook to restate the Interstate Commerce Act and related laws "without substantive change" and to enact those laws as subtitle IV of the 49th title of the United States Code. See 124 Cong. Rec. 30172 (1978) (remarks of Reps. Eilberg, McClory).[6] That this recodification was intended to effect no substantive change was reflected not only in the legislative history, but also in the statutory language. To this end, Section 3(a) of the recodification statute (Pub. L. No. 95-473, 92 Stat. 1466), entitled "Legislative Purpose and Construction," states that "Sections 1 and 2 of this Act restate, *without substantive change*, laws enacted before May 16, 1978, that were replaced by those sections. Those sections *may not be construed as making a substantive change in the laws replaced*" (emphasis added). In addition, Section 3(c) provides that "[a]n order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act *continues in effect* under the corresponding provision enacted by this Act until repealed, amended, or superseded" (emphasis added). And Section 3(d) provides that offenses committed under replaced sections are "deemed to have been * * * committed under" the recodified sections.

The Act also contains a significant savings provision which in substance, provides that whenever a function, power or duty is transferred, reference in any other federal law to the power transferred shall be deemed to mean the party to whom the power, duty or function was vested.

[6] The 1978 recodification was the first part of an ongoing legislative project to restate and codify federal transportation law. Future revisions and codifications will include subtitle I of title 49. See H.R. Rep. No. 1395, 95th Cong., 2d Sess. 5 (1978); see also *United States* v. *Rossetti Brothers*, *supra*, 671 F.2d at 720 n.6.

Among the sections of the Interstate Commerce Act thus restated "without substantive change" was 49 U.S.C. 322(g) (currently codified at 49 U.S.C. (Supp. IV) 11909(b)),[7] which imposes criminal penalties on private carriers that, like respondent RSR, "knowingly" and "willfully" maintain false records in violation of safety regulations. The significance of these criminal sanctions in the statutory scheme can scarcely be overstated. They are the only means Congress prescribed for enforcement of DOT safety and recordkeeping regulations. In the absence of criminal enforcement, the regulations covering important questions of public safety would be, as the Second Circuit recognized in *United States* v. *Rossetti Brothers*, *supra*, 671 F.2d at 720 "reduce[d] * * * to precatory provisions." In that event, the 108,000 private carriers under DOT's jurisdiction would be subject to no effective regulation under the Interstate Commerce Act.

The clear import of 49 U.S.C. (Supp. IV) 11909(b), when read in the context of the recodification statute of which it was a part, is that the pre-existing criminal sanctions would continue "without substantive change" and that pre-existing regulations would "continue[] in effect." Under settled rules of statutory construction, this statutory context may not be overlooked. It is well established that "a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling [its] responsibility in interpreting legislation [this Court] 'must not be guided by a single sen-

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[7] In the process of recodification a minor language change was made in this section. Where Section 322(g) had referred to "[a]ny motor carrier * * * who shall willfully fail or refuse to make a report to the Commission as required by this chapter * * *," the replacement provision, Section 11909(b), refers to "[a] person required to make a report to the Commission * * * about transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title * * *."

tence or member of a sentence, but [should] look to the provisions of the whole law * * *'." *Richards* v. *United States*, 369 U.S. 1, 11 (1962) (footnote omitted). Accord, *United States* v. *Turkette*, 452 U.S. 576, 587-588 n.10 (1981); *United States* v. *Naftalin*, 441 U.S. 768, 772-774 (1979); *Bifulco* v. *United States*, 447 U.S. 381, 388-390 (1980); *NLRB* v. *Lion Oil Co.*, 352 U.S. 282, 288 (1957); see *United States* v. *Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1850); 2A C. Sands, *Sutherland Statutory Construction* § 46.05 (1973). Thus, "courts should interpret a statute with an eye to the surrounding statutory landscape and an ear for harmonizing potentially discordant provisions * * *." *United States* v. *Bass*, 404 U.S. 336, 344 (1971). Indeed, even in the context of sentencing provisions in penal statutes, a single phrase should not be construed in isolation from the statutory scheme as a whole when to do so would result in a meaning that contradicts or distorts "the fair import of the whole remaining language." *United States* v. *Brown*, 333 U.S. 18, 25-26 (1948); see, *e.g.*, *United States* v. *Campos-Serrano*, 404 U.S. 293, 298 (1971); *United States* v. *Bass*, *supra*, 404 U.S. at 350-351.

Rather than interpret Section 11909(b), as it should have, in the context of the statute of which it was a part, the court of appeals focused on a minor language change in the recodification (see note 7, *supra*). By limiting its scope of inquiry to the words "subject to the jurisdiction of the Commission" (49 U.S.C. (Supp. IV) 11909(b)), the court rendered an unduly narrow interpretation wholly at odds with the stated objective of Congress. Thus, the court concluded that, because authority to regulate private carriers had been transferred from the ICC in 1966, the 1978 statutory reference to ICC jurisdiction could not have included such carriers. In so concluding, the court effectively ignored both the Department of Transportation Act of

1966, which transferred the relevant ICC powers, and the express language of the 1978 recodification, which instructed the federal courts to construe Section 11909(b) as "not * * * making a substantive change." Construing Section 11909(b) as making no substantive change requires a conclusion different from that of the court of appeals—*i.e.*, that once the "jurisdiction of the Commission" was transferred to DOT, DOT was invested with full power to assure private carrier safety by promulgating regulations enforced by criminal sanctions.

2. The court of appeals believed that the language of Section 11909(b) abolished criminal jurisdiction over private carriers for violations of safety regulations, even though it recognized that the legislative history conclusively showed that Congress intended to preserve that jurisdiction. App. A, *infra*, 10a ("this is what Congress clearly meant to say, intended to say, and wanted to say"). Yet, feeling bound by its restrictive reading of the statute and the rule of lenity, the court held that "Congress did not say it" (*ibid.*). As explained above, the court erred in its interpretation of the language of the statute; beyond this, however, it erred in failing to give effect to Congress' intent as expressed in the legislative history. See *United States* v. *Rossetti Brothers*, *supra*, 671 F.2d at 720 ("[w]here Congress's purpose is frustrated by a rigid application of statutory language, common sense and evident statutory purpose must inform a court's construction of the statute").

Contrary to the view of the court of appeals, the rule of lenity is merely "a[] guide to statutory construction" (*Callanan* v. *United States*, 364 U.S. 587, 596 (1961)), which is not applicable unless there is such a "grievous ambiguity or uncertainty in the language and structure of the Act" (*Huddleston* v. *United States*, 415 U.S. 814, 831 (1974)) that even "[a]fter [a court has] 'seiz[ed] every thing from which aid can be derived * * *' [it is

still] left with an ambiguous statute." *United States* v. *Bass*, *supra*, 404 U.S. 347, quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805). As this Court observed in *United States* v. *Moore*, 423 U.S. 122, 125 (1975), quoting *United States* v. *Brown*, 333 U.S. 18, 25-26 (1948):

> The canon in favor of strict construction [of criminal statutes] is not an inexorable command to override common sense and evident statutory purpose * * *. Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.

See also, *e.g.*, *United States* v. *Naftalin*, 441 U.S. 768, 778-779 (1979), *United States* v. *Culbert*, 435 U.S. 371, 379 (1978); *Scarborough* v. *United States*, 431 U.S. 563, 577 (1977); *Iannelli* v. *United States*, 420 U.S. 770, 789 (1975); *id.* at 795 (Douglas, J., dissenting); *id.* at 798 (Brennan, J., dissenting); *United States* v. *Moore*, 613 F.2d 1029, 1043-1045 (D.C. Cir. 1979), cert. denied, 446 U.S. 954 (1980).

Moreover, as this Court noted in *United States* v. *Culbert*, *supra*, 435 U.S. at 379, the rule of lenity applies only when a statute is genuinely ambiguous, or uncertainty exists as to Congress' intent. See also *United States v. Batchelder*, 442 U.S. 114, 121 (1979). Thus, the rule of lenity is not implicated here. As we have shown, the recodification plainly negates any suggestion that criminal sanctions were intended to be repealed. Moreover, the statute's legislative history shows—without a shred of evidence to the contrary—that Congress "intended merely to transplant [the penalty] section, renumbered into the recodified portion of the Act." *United States* v. *Rossetti Brothers*, *supra*, 671 F.2d at 720.[8]

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[8] *Rossetti Brothers* involved a companion provision to the one at issue in this case (49 U.S.C. (Supp. IV) 11914(b)), which is

Since Congress' intent is clearly expressed in the legislative history, as the court of appeals recognized, the court erred in failing to give weight to the legislative history in rendering its interpretation.

3. Even if the rule of lenity were relevant to this case, the court of appeals seriously erred in its application of the rule. As this Court has held (*United States* v. *Brown*, *supra*, 333 U.S. at 25-26), no rule of statutory construction requires

> magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language. As was said in *United States* v. *Gaskin*, 320 U.S. 527, 530, the canon "does not require distortion or nullification of the evident meaning and purpose of the legislation."

See *United States* v. *Turkette*, *supra*, 452 U.S. 587-588 n.10; *United States* v. *Moore*, 423 U.S. 122, 145 (1975); see also *Barrett* v. *United States*, 423 U.S. 212, 218 (1976); *United States* v. *Cook*, 384 U.S. 257, 262 (1966).

In this case, Congress' intent that the 1978 legislation work no substantive change is manifest. The court of appeals' conclusion that criminal jurisdiction was "inadvertently" stripped from the Interstate Commerce Act is precisely the kind of conclusion that Congress sought to prevent by the plain language of its savings provisions.[9] Moreover, the court's conclusion directly

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the recodification of 49 U.S.C. 322(a)). The legislative history involved is precisely the same for both provisions and, as is clear from the Second Circuit's analysis, there is no doubt that that court would disagree with the Fifth Circuit's decision here.

[9] See note 3, *supra*; see also H.R. Rep. No. 1395, 95th Cong., 2d Sess. 4, 9–10 (1978):

> The purpose of the bill is to restate in comprehensive form, without substantive change, the Interstate Commerce Act and related laws, and to enact those laws as subtitle IV of title 49, United States Code.

conflicts with the established presumption that recodifications are not meant to make substantive changes in previous statutes. See *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222, 227-228 (1957); *United States* v. *Cook*, 384 U.S. 257, 262 (1966); *Cass* v. *United States*, 417 U.S. 72, 82 (1974).[10] If legislative intent could be thwarted by mechanical application of the "rule of lenity," congressional attempts to restate complex legislation would be hampered and the current effort to recodify the Interstate Commerce Act would be burdened by the need for correcting amendments before Congress could proceed to the next stage of its recodification process.[11] Such a result is not demanded by the "rule of lenity," which should only be utilized when a court's "* * * interpretation can be

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> *Substantive change not intended.*—Like other codifications undertaken to enact into positive law all titles of the United States Code, this bill makes no substantive changes in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged.

[10] Indeed, this Court's recent decision in *Bifulco* v. *United States*, 447 U.S. 381, 400 (1980), establishes that clearly expressed legislative intent overrides inadvertent or inartful draftsmanship. See also *Cass* v. *United States*, *supra*, 417 U.S. at 81-82; *Greenwood* v. *Peacock*, 384 U.S. 808, 815-816 (1966).

[11] A bill recently has been introduced in Congress as part of the ongoing recodification of the Interstate Commerce Act. In light of the decision below, that bill contains provisions that would amend the Act in a manner that addresses the concerns expressed by the court of appeals. H.R. 6998, 97th Cong., 2d Sess. §§ 6, 522 (1982). We shall advise the Court of material developments with respect to this pending bill insofar as they relate to the issues raised in this petition.

based on no more than a guess as to what Congress intended." *Bifulco* v. *United States*, *supra*, 447 U.S. at 387. It should not be used to directly contradict legislative intent or to reach what the Second Circuit correctly characterized as an "anomalous result." *United States* v. *Rossetti Brothers*, *supra*, 671 F.2d at 720.

Moreover, this case does not involve the factors that typically have formed the basis for this Court's invocation of the rule of lenity. First, there is no serious dispute that RSR received "fair warning" of the requirements of the law (*United States* v. *Bass*, *supra*, 404 U.S. at 348). RSR clearly had notice of the required conduct from prior compliance surveys that disclosed numerous violations and evoked corporate promises to remedy the violations. In addition, RSR's guilty plea admitted making, in the words of the statute, "willful[ ]" and "knowing[ ]" falsifications in its reports, and the testimony at the plea hearing established the factual basis for the conviction (June 18, 1980 Tr. 31-36). Moreover, 49 C.F.R. 395.8 expressly states that any violation "shall make * * * the carrier liable to prosecution" (see note 2, *supra*), and RSR has never questioned the application of this regulation. Thus, this is not a case involving inadvertent violations of regulatory requirements of which RSR was unaware.[12]

Second, this case does not present the other basis for the holding in *United States* v. *Bass*, *supra*, 404 U.S.

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[12] The court of appeals noted that "[t]he parties do not dispute that the information would have been proper if RSR had been charged with a violation of [the predecessor statute] 49 U.S.C. 322(g) and if that statute were still in effect" (App. A, *infra*, 8a). Section 3(c) of the recodification (see note 3, *supra*) expressly provides that any "regulation in effect under a law replaced [by the recodification] * * * *continues in effect* under the corresponding provision enacted by this Act * * *" (emphasis added). And Section 3(d) provides that offenses committed under replaced sections are "deemed to have been * * * committed" under the recodified sections.

at 348: "'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should'" (quoting H. Friendly, *Benchmarks, Mr. Justice Frankfurter and the Reading of Statutes*, 196, 209 (1967)). RSR is a corporate defendant subject only to the same penalty (a fine) traditionally imposed in civil or administrative proceedings.

Third, unlike *Williams* v. *United States*, No. 80-2116 (June 29, 1982), slip op. 11, this is not a case in which the "legislative history * * * fails to evidence congressional awareness of the statute's claimed scope." As we have demonstrated, the government's interpretation is the only one Congress considered and Congress made its intent clear in Section 3 of the recodification statute.

Finally, also unlike *Williams* v. *United States*, *supra*, slip op. 11, this case does not involve "subject matter that has traditionally been regulated by state law." The enforcement powers at issue here have long been exercised by the ICC and more recently by DOT. Moreover, there can be no dispute that application of safety standards to private carriers engaged in interstate commerce is a subject properly within the purview of federal law.

In short, no rule of statutory construction compels a court to disregard the express language and structure of a statute, or to ignore the unqualified expression of intent contained in the legislative history. Under governing canons of statutory construction as often pronounced by this Court and as applied by the Second Circuit in *United States* v. *Rossetti Brothers*, *supra*, the only proper result is to read the recodification precisely as Congress directed—as restating prior law "without substantive change."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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